that of the federal disclaimer, may combine the wording of the disclaimers. All of the wording of the federal disclaimer must be included in the resulting combined disclaimer.

PART 1720—FORMAL PROCEDURES AND RULES OF PRACTICE

Subpart A—Rules and Rulemaking

Subpart B—Filing Assistance

Subpart C [Reserved]

Subpart D—Adjudicatory Proceedings

AUTHORITY: 15 U.S.C. 1718; 42 U.S.C. 3535(d).

SOURCE: 43 FR 29496, July 7, 1978, unless otherwise noted.

Subpart A—Rules and Rulemaking

§ 1720.1 Scope of rules in this subpart.

The rules in this subpart apply to and govern procedures for the promulgation of rules and regulations under the Act. The rules in this subpart do not apply to interpretative rules, general statements of policy, rules of organization procedure or practice or in any situation in which the Secretary for good cause finds (and incorporates the findings and brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

§ 1720.5 Initiation of rulemaking.

(a) The issuance, amendment or repeal of any rule or regulation may be proposed upon the initiative of the Secretary or upon the petition of any interested person showing reasonable grounds therefor.

(b) Petitions for rulemaking by interested persons filed under this section:

(1) Shall be identified as a petition for rulemaking under this subpart;

(2) Shall explain the interest of the petitioner in the action requested;

(3) Shall set forth the text or substance of the rule or amemdment proposed or specify the rule that the petitioner seeks to have repealed, as the case may be;

(4) Shall contain any information and arguments available to the petitioner to support the action sought; and

(5) Shall be filed with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451 Seventh Street SW., Washington, DC 20410.

(c) The Secretary shall respond to a petition submitted under this section within 180 days of receipt thereof, except that this time limit may be exceeded for good cause found and communicated to the petitioner. The Secretary's normal response shall be to grant or deny the petition but alternatively, the Secretary may schedule a public hearing or other appropriate proceeding prior to the granting or denial of a petition. If the Secretary grants the petition, the Secretary shall publish a proposed rule in accordance with the petition and a copy of the proposed rule shall be furnished to the petitioner. If the Secretary denies the petition, the Secretary shall notify the petitioner within 7 days after such denial.

§ 1720.10 Investigations and conferences.

(a) In connection with a rulemaking proceeding, the Secretary may conduct such investigations, make such studies, and hold such conferences as are necessary. Investigations in connection with a rulemaking may be conducted in accordance with the general investigatory procedures under part 3800 of this chapter.

(b) At any such conferences, interested persons may appear to express views and suggest amendments relative to proposed rules.

[61 FR 10442, Mar. 13, 1996]

§ 1720.15 Notice.

General notice of proposed rulemaking shall be published in the FEDERAL REGISTER and, to the extent practicable, otherwise made available to interested persons. Such notice shall state the time, place, and nature of public hearings, if any; the authority under which the rule or regulation is proposed; either the terms or substance of the proposed rule or regulation or a description of the subjects and issues involved; and the manner in which interested persons shall be afforded the opportunity to participate in the rulemaking. If the rulemaking was instituted pursuant to petition, a copy of the notice shall be served on the petitioner.

§ 1720.20 Promulgation of rules and regulations.

The Secretary, after consideration of all relevant matters of fact, law, policy, and discretion, including all relevant matters presented by interested persons in the rulemaking proceedings, shall adopt and publish in the FEDERAL

REGISTER an appropriate rule or regulation together with a concise general statement of its basis and purpose and any necessary findings; or the Secretary shall give other appropriate public notice of disposition of the rulemaking proceeding.

§1720.25 Effective date of rules and regulations.

The effective date of any rule or regulation or of an amendment, suspension, or repeal of any rule or regulation shall be specified in a notice published in the FEDERAL REGISTER. Such date shall not be less than 30 days after the date of such publication unless the Secretary specifies an earlier effective date for good cause found and published with the rule or regulation.

Subpart B—Filing Assistance

§1720.30 Scope of this subpart.

The rules in this subpart apply to and govern procedures under which developers may obtain prefiling assistance and be notified of and permitted to correct deficiencies in the Statement of Record.

§1720.35 Prefiling assistance.

Persons intending to file with the Office of Interstate Land Sales Registration may receive advice of a general nature as to the preparation of the filing including information as to proper format to be used and the scope of the items to be included in the format. Inquiries and requests for informal discussions with staff members should be directed to the Administrator, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

§1720.40 Processing of filings.

(a) Statements of Record and accompanying filing fees will be received on behalf of the Secretary by the Administrator, Office of Interstate Land Sales Registration, for determination of:

(1) Completeness of the statement,
(2) Adequacy of the filing fee and
(3) Adequacy of disclosure.

Where it appears that all three criteria are satisfied and it is otherwise practicable, acceleration of the effectiveness of the Statement of Record will normally be granted.

(b) Filings intended as Statements of Record but which do not comply in form with §§1710.105 and 1710.120 of this chapter, whichever is applicable, and Statements of Record accompanied by inadequate filing fees will not be effective to accomplish any purpose under the Act. At the discretion of the Administrator, such filings and any moneys accompanying them may be immediately returned to the sender or after notification may be held pending the sender's appropriate response.

(c) Persons filing incomplete or inaccurate Statements of Record will be notified of the deficiencies therein by the Suspension Notice procedure described in §1710.45(a) of this chapter.

Subpart C [Reserved]

Subpart D—Adjudicatory Proceedings

GENERAL PROVISIONS

§1720.105 Scope of rules in this subpart.

The rules in this subpart are applicable to adjudicative proceedings which involve a hearing or opportunity for a hearing under the Interstate Land Sales Full Disclosure Act.

§1720.110 Applicability of sections of this subpart.

Succeeding sections of this subpart shall apply to all adjudicatory hearings conducted by OILSR unless specifically limited in applicability by a particular section.

§1720.115 Department representative.

In each case heard before an administrative law judge pursuant to this part, the Department shall be represented by a Department hearing attorney. The General Counsel shall designate one or more attorneys to act as Department hearing attorneys.

§1720.120 Qualification for appearances.

(a) Members of the bar of a Federal Court or of the highest court of any

state or of the United States are eligible to practice before the Secretary. No register of attorneys will be maintained.

(b) Any individual or member of a partnership involved in any proceeding or investigation may appear on personal behalf or that of the partnership upon adequate identification. A corporation or association may be represented by a bona fide officer thereof upon a showing of adequate authorization.

(c) A person shall not be represented except as stated in paragraphs (a) and (b) of this section unless otherwise permitted.

§ 1720.125 Public nature and timing of hearings.

(a) All hearings in adjudicative proceedings shall be public.

(b) Hearings shall proceed with all reasonable speed and insofar as practicable, shall be held at one place and shall continue without recess or suspension until concluded. The administrative law judge shall have the authority to order brief intervals of the sort normally involved in judicial proceedings and, in unusual and exceptional circumstances for good cause stated on the record, shall have the authority to order hearings at more than one place and to order recesses to permit further gathering of evidence or settlement discussions.

§ 1720.130 Restrictions on appearances as to former officers and employees.

(a) Except as specifically authorized by the Secretary, no former officer or employee of the Department of Housing and Urban Development shall appear as attorney or counsel or otherwise participate through any form of professional consultation or assistance in any proceeding or investigation, formal or informal, which was pending in any manner in the Office of Interstate Land Sales Registration while such former officer or employee served with the Department of Housing and Urban Development.

(b) In cases to which paragraph (a) of this section is applicable, a former officer or employee of the Department of Housing and Urban Development may request authorization to appear or participate in a proceeding or investigation by filing with the Secretary a written application disclosing the following relevant information:

(1) The nature and extent of the former officer's or employee's participation in, knowledge of, and connection with the proceeding or investigation during service with the Department of Housing and Urban Development;

(2) Whether the files of the proceeding or investigation came to the former officer or employee's attention;

(3) Whether the former officer or employee was employed in the same office, division, or administrative unit in which the proceeding or investigation is or has been pending;

(4) Whether the former officer or employee worked directly or in close association with the Office of Interstate Land Sales Registration personnel assigned to the proceeding or investigation;

(5) Whether during service with the Department of Housing and Urban Development the former officer or employee was engaged in any matter concerning the individual, company or industry in the proceeding or investigation.

(c) The requested authorization will not be given in any case:

(1) Where it appears that the former officer or employee during service with the Department of Housing and Urban Development participated personally and substantially in the proceeding or investigation, or

(2) Where the application is filed within one (1) year after termination of the former officer's or employee's service with the Department of Housing and Urban Development and it appears that within a period of one (1) year prior to the termination of service the proceeding or investigation was within the official responsibility of the former officer or employee.

In other cases, authorization will be given where the Secretary is satisfied that the appearance or participation will not involve any actual conflict of interest or impropriety thereof.

(d) In any case in which a former officer or employee of the Department of Housing and Urban Development is

prohibited under this section from appearing or participating in a proceeding or investigation, any partner or legal or business associate of such former officer or employee shall likewise be so prohibited unless:

(1) Such partner or legal or business associate files with the Secretary an affidavit that in connection with the matter the services of the disqualified former officer or employee will not be utilized in any respect and the matter will not be discussed with the former officer or employee in any manner, and that the disqualified former officer or employee shall not share, directly or indirectly, in any fees or retainers received for services rendered in connection with such proceeding or investigation;

(2) The disqualified former officer or employee files an affidavit agreeing not to participate in the matter in any manner, and not to discuss it with any person involved in the matter; and

(3) Upon the basis of such affidavits, the Secretary determines that the appearance or participation by the partner or associate would not involve any actual conflict of interest or impropriety thereof.

§1720.135 Standards of practice.

(a) Attorneys shall conform to the standards of professional and ethical conduct required by practitioners in the courts of the United States and by the bars of which the attorneys are members.

(b) The privilege of appearing or practicing may be denied, temporarily or permanently, to any person who is found after notice and opportunity for hearing which at the person's request or in the discretion of the Secretary may be private, and for presentation of oral argument in the matter:

(1) Not to possess the requisite qualifications to represent others, or

(2) To be lacking in character or integrity, or

(3) To have engaged in unethical or improper professional conduct.

(c) Contemptuous conduct at any hearing shall be grounds for summary exclusion from said hearing for the duration of the hearing.

§1720.140 Administrative law judge, powers and duties.

(a) Hearings in adjudicative proceedings shall be presided over by a duly qualified administrative law judge who shall be designated by the Secretary in a notice to the parties in the proceeding.

(b) Administrative law judges shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings and to maintain order. They shall have all powers necessary to those ends including all powers granted under 5 U.S.C. 556(c), and also power including but not limited to the following:

(1) To administer oaths and affirmations.

(2) To issue subpoenas and orders requiring access.

(3) To take or to cause depositions to be taken.

(4) To rule upon offers of proof and receive evidence.

(5) To regulate the course of the hearings and the conduct of the parties and their counsel.

(6) To hold conferences for simplification and clarification of the issues or any other purpose.

(7) To consider and rule upon as justice may require, all procedural and other motions appropriate in an adjudicative proceeding, including motions to open defaults.

(8) To make and file decisions.

(9) To certify question to a Departmental appeals officer.

(10) To take any action authorized by the rules in this part or other appropriate action.

§1720.145 Disqualification of administrative law judge.

(a) When an administrative law judge feels disqualified from presiding in a particular proceeding, the administrative law judge shall withdraw therefrom by notice on the record and shall notify the Secretary of such withdrawal.

(b) Whenever any party believes that the administrative law judge should be disqualified from presiding, or continuing to preside in a particular proceeding, such party may file with the administrative law judge a motion that

the administrative law judge be disqualified and removed. Such motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the administrative law judge does not agree to disqualification, the hearing shall proceed, and the question of fair hearing and due process may be raised on appeal.

§ 1720.150 Failure to comply with administrative law judge's directions.

Any party who refuses or fails to comply with a lawfully issued order or direction of an administrative law judge may be considered to be in contempt of the Secretary. The circumstances of any such neglect, refusal or failure, together with a recommendation for appropriate action, shall be promptly certified by the administrative law judge to the Secretary who may make such orders in regard thereto as the circumstances may warrant.

§ 1720.155 Ex parte communications.

(a) No person shall communicate with an administrative law judge or an appeals officer either directly or indirectly concerning any pending proceeding unless prior to or simultaneously with such communication its contents are disclosed in detail to all persons interested in the proceeding; nor shall an adminstrative law judge or appeals officer request or consider any such unauthorized ex parte communication. This prohibition shall not apply to a simple request for information respecting the status of the proceeding, nor to any ex parte communication expressly authorized by these rules.

(b) Any administrative law judge or appeals officer, who receives an ex parte communication which the judge knows or has reason to believe is unauthorized, shall promptly place the communication, or its substance, in the public file and shall inform all persons interested in the proceeding of its existence and general contents. Facts or arguments so communicated shall not be taken into account in deciding any matter in issue unless such facts or arguments shall be brought properly before the administrative law judge.

(c) Opportunity to answer allegations or contentions contained in an unauthorized ex parte communication may be afforded any interested person upon motion for leave to do so, wherever such leave will operate to assure a fair hearing or decision.

§ 1720.160 Form and filing requirements.

(a) *Filing.* Except as otherwise permitted, an original and three copies of all documents shall be filed with the Docket Clerk for Administrative Proceedings, Room 10278, Department of Housing and Urban Development, Washington, DC 20410, on official work days between the hours of 8:45 a.m. and 5:15 p.m.

(b) *Title.* Documents shall show clearly the title of the action, the docket number, and OILSR file number in connection with which they are filed.

(c) *Form.* Except as otherwise permitted, all documents shall be printed, typewritten, or otherwise processed in clear legible form and on good unglazed paper.

§ 1720.165 Time computation.

Computation of any period of time prescribed or allowed by the rules and regulations in this part, or by order of the Secretary or of an administrative law judge, shall begin with the first business day following that on which the act, event, development or default initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Housing and Urban Development is closed, the period shall run until the end of the next following business day. Except when any prescribed or allowed period of time is 7 days or less, each of the Saturdays, Sundays, and national holidays shall be included in the computation of the prescribed or allowed period.

§ 1720.170 Service.

Notices, orders, processes, determinations and other documents required or permitted under these rules may be served as follows:

(a) *Upon the Secretary.* By personal delivery at the office, or by registered or certified mail addressed to the office of any of the following officials in the

Office of Interstate Land Sales Registration: Administrator; Associate Administrator; Director, Office of Interstate Land Sales Registration: *Provided, however,* That during the pendency of a proceeding before the Secretary all pleadings, motions, notices or other documents shall be served in accordance with the terms of §1720.160.

(b) *Upon any other person.* By delivery of a copy of the documents to the person to be served wherever the person may be found, or by leaving such copy at the person's office or place of business with a person apparently in charge thereof, or, if there is no one in charge or if the office is closed or if the person has no office, by leaving a copy at the person's residence with some person of suitable age and discretion then residing therein, or sending a copy by registered or certified mail, return receipt requested, addressed to the person at the person's last known residence, or at the person's last known principal office or place of business. If the address of the residence, principal office, or place of business is unknown and cannot with due diligence be ascertained, service may be made by mail to any office at which the person to be served is known to be employed or by publication in the FEDERAL REGISTER.

(c) *Service on corporations, partnerships, associations, other entities.* Service may be made upon any corporation, partnership, business association or other entity by serving any officer, director, partner, trustee, agent for service or managing agent thereof. A managing agent, within the meaning of this subsection, is an agent having the principal managerial responsibility in connection with the regular operation of a distinct office or activity of the enterprise.

(d) *Service through attorney.* When a person other than the Secretary and the Secretary's staff shall have appeared of record in a proceeding, generally or specially, by attorney, all subsequent services of notices, orders, processes, and other documents in connection with such proceeding may be made upon such person by serving the attorney, except that subpoenas and other orders by which such person may be brought in contempt shall be served upon the person by one of the methods described in paragraphs (b) and (c) of this section. In any case, a copy of any document served on a client shall be sent to any attorney who has entered an appearance for that client. In such situations, it shall be sufficient proof of service to show that either the client or the attorney has received a copy of the document.

(e) *Proof of service.* Proof of service shall not be required unless the fact of service is reasonably put in issue by appropriate motion or objection on the part of the person allegedly served or other party. In such cases, service may be established by written admission signed by or on behalf of the person to be served, or may be established prima facie by affidavit or certificate of service or mailing, as appropriate. When service is by registered or certified mail, it is complete upon delivery of the document by the post office.

§1720.175 Intervention by interested persons.

(a) The administrative law judge, upon timely petition in writing and for good cause shown, and if deemed to be in the public interest, may permit any person to participate by intervention in the proceeding. The petition shall state:

(1) The petitioner's relationship to and interest in the matters contained in the proceeding;

(2) The petitioner's position with respect to each specific issue upon which the petitioner proposes to intervene, and the facts which the petitioner proposes to adduce in support of each such position; and

(3) An assent to exercise of jurisdiction by the Department with respect to the petitioner.

(b) The administrative law judge shall determine the propriety of such intervention and the extent to which such intervener may participate, basing such determination upon applicable law, the directness and substantiality of the petitioner's interest in the proceeding and the effect upon the proceeding of allowing such participation.

§ 1720.180 Settlements.

Parties may propose in writing, at any time during the course of a proceeding, offers of settlement which shall be submitted to the Secretary. If determined to be appropriate, the party making the offer may be given an opportunity to make an oral presentation in support of such offer. If an offer of settlement is rejected, the party making the offer shall be so notified and the offer shall be deemed withdrawn and shall not constitute a part of the record in the proceeding. Final acceptance by the Secretary of any offer of settlement will terminate any proceeding related thereto upon notification to the administrative law judge or the appeals officer.

PLEADINGS

§ 1720.205 Suspension notice under § 1710.45(a) of this chapter.

A suspension pursuant to § 1710.45(a) of this chapter shall be effected by service of a suspension notice which shall contain:

(a) An identification of the filing to which the notice applies.

(b) A specification of the deficiencies of form, disclosure, accuracy, documentation or fee tender which constitute the grounds under § 1710.45(a) of this chapter, of the suspension, and of the additional or corrective procedure, information, documentation, or tender which will satisfy the Secretary's requirements.

(c) A notice of the hearing rights of the developer under § 1720.210 and of the procedures for invoking those rights.

(d) A notice that, unless otherwise ordered, the suspension shall remain in effect until 30 days after the developer cures the specified deficiencies as required by the notice.

§ 1720.210 Hearings—suspension notice pursuant to § 1710.45(a) of this chapter.

(a) A developer, upon receipt of a suspension notice issued pursuant to § 1710.45(a) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the suspension notice. Such a request must be filed within 15 days of receipt of the suspension notice and must be accompanied by an answer and 3 copies thereof signed by the respondent or the respondent's attorney conforming to the requirements of § 1720.245. Filing of a motion for a more definite statement pursuant to § 1720.315 shall alter the period of time to request a hearing in accordance with § 1720.240.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension notice, and suspension of the effective date of the Statement or amendment shall continue until vacated by order of the Secretary or administrative law judge. Except in cases in which the developer shall waive or withdraw the request for such hearing, or shall fail to pursue the same by appropriate appearance at a hearing duly scheduled, noticed and convened, the suspended filing shall be reinstated in the event of failure of the Secretary to schedule, give notice of or hold a duly-requested hearing within the time specified in paragraph (b) of this section, or in the event of a finding that the Secretary has failed to support at such hearing the propriety of the suspension with respect to the material issues of law and fact raised by the answer. Such reinstatement shall be effective on the date on which the filing would have become effective had no notice of suspension been issued with respect to it.

(d) If there is an outstanding suspension notice under § 1710.45(a) with respect to the same matter for which a suspension order under § 1710.45(b)(3) is issued, the notice and order shall be consolidated for the purposes of hearing. In the event that allegations upon which the suspension notice and suspension order are based are identical, only one answer need be filed.

§1720.215 Notice of proceedings pursuant to §1710.45(b)(1) of this chapter.

A proceeding pursuant to §1710.45(b)(1) of this chapter is commenced by issuance and service of a notice which shall contain:

(a) A clear and accurate identification of the filing or filings to which the notice relates.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the statements, omissions, conduct, circumstances or practices alleged to constitute the grounds for the proposed suspension order under §1710.45(b)(1) of this chapter.

(c) A notice of hearing rights of the developer under §1720.220 and of the procedures for invoking those rights.

(d) Designation of the administrative law judge appointed to preside over pre-hearing procedures and over the hearings.

(e) A notice that failure to file an answer or motion as provided under §1720.240 will result in an order suspending the Statement of Record.

§1720.220 Hearings—notice of proceedings pursuant to §1710.45(b)(1) of this chapter.

(a) A developer, upon receipt of a notice of proceedings issued pursuant to §1710.45(b)(1) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such a request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of §1720.245. Filing of a motion for a more definite statement pursuant to §1720.315 shall alter the period of time to request a hearing in accordance with §1720.240.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of the request by the Secretary unless it is determined that it is not in the public interest. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by §1720.140 or failure of a developer to appear at a hearing duly scheduled shall result in an appropriate order under §1710.45(b)(1) of this chapter suspending the statement of record. Such order shall be effective as of the date of service or receipt.

§1720.225 Suspension order under §1710.45(b)(2) of this chapter.

A suspension pursuant to §1710.45(b)(2) of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) Bases for issuance of order.

(c) A notice of the hearing rights of the developer under §1720.235 the procedures for invoking those rights.

(d) A statement that the order shall remain in effect until the developer has complied with the Secretary's requirements.

§1720.230 Suspension order under §1710.45(b)(3) of this chapter.

A suspension pursuant to paragraph (b)(3) of §1710.45 of this chapter shall be effected by service of a suspension order which shall contain:

(a) An identification of the filing to which the order applies.

(b) An identification of the amendment to the filing which generated the order.

(c) A statement that the issuance of the order is necessary or appropriate in the public interest or for the protection of purchasers.

(d) A statement that the order shall remain in effect until the amendment becomes effective.

(e) A notice of the hearing rights of the developer under §1720.235 and of the procedure for invoking those rights.

§1720.235 Hearings—suspension orders issued pursuant to §1710.45(b)(2) and §1710.45(b)(3) of this chapter.

(a) A developer, upon receipt of a suspension order issued pursuant to §1710.45(b)(2) or §1710.45(b)(3) of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request

contained in the suspension order. Such request must be filed within 15 days of receipt of the suspension order and must be accompanied by an answer and 3 copies thereof signed by the respondent or respondent's attorney conforming to the requirements of § 1720.245. Filing of a motion for a more definite statement pursuant to § 1720.315 shall alter the period of time to request a hearing in accordance with § 1720.240.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 20 days of receipt of the request. The time and place for hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) A request for hearing filed pursuant to paragraph (a) of this section shall not interrupt or annul the effectiveness of the suspension order.

§ 1720.236 Notice of proceedings to withdraw a State's certification pursuant to § 1710.505 of this chapter.

A proceeding pursuant to § 1710.505 of this chapter is commenced by issuance and service of a notice which shall contain:

(a) An identification of the State certification to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Secretary's determination, pursuant to § 1710.505, that the State's laws, regulations and the administration thereof, taken as a whole, no longer meet the requirements of § 1710. 501.

(c) A notice of hearing rights of the State under § 1720.237 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer or motion as provided under § 1720.240 will result in an order suspending the State's certification.

[45 FR 40499, June 13, 1980]

§ 1720.237 Hearings—notice of proceedings pursuant to § 1710.505 of this chapter.

(a) A State, upon receipt of a notice of proceedings issued pursuant to § 1710.505 of this chapter, may obtain a hearing by filing a written request in accordance with the instructions regarding such request contained in the notice of proceedings. Such request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of § 1720.245. Filing of a motion for a more definite statement pursuant to § 1720.315 shall alter the period of time to request a hearing in accordance with § 1720.240.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties or their representatives.

(c) Failure to answer within the time allowed by § 1720.240 or failure to appear at a hearing duly scheduled shall result in an appropriate order under § 1710.505 of this chapter withdrawing the State's certification. Such order shall be effective as of the date of service or receipt.

[45 FR 40499, June 13, 1980]

§ 1720.238 Notices of proceedings to terminate exemptions pursuant to §§ 1710.14, 1710.15 and 1710.16 of this chapter.

A proceeding to terminate a self-determining exemption under § 1710.14 or an exemption order under § 1710.15 or § 1710.16 is commenced by issuance and service of a notice which shall contain:

(a) In the case of an exemption under § 1710.14, an identification of the developer and subdivision to which this notice applies. In the case of an exemption under either § 1710.15 or § 1710.16, an identification of the exemption order to which the notice applies.

(b) A clear and concise statement of material facts, sufficient to inform the respondent with reasonable definiteness of the basis for the Secretary's determination that further exemption from the registration and disclosure requirements is not in the public interest or that the sales or leases do not meet the requirements for exemption, or both.

(c) A notice of hearing rights of the respondent under §1720.239 and of the procedures for invoking those rights.

(d) A notice that failure to file an answer or motion as provided under §1720.240 will result, in the case of a notice issued under §1710.14, an order terminating eligibility for the exemption, or, in the case of a notice issued under either §1710.15 or §1710.16, an order terminating the exemption order.

[45 FR 40499, June 13, 1980, as amended at 54 FR 40868, Oct. 4, 1989]

§1720.239 Hearings—notice of proceedings pursuant to §§1710.14, 1710.15 and 1710.16 of this chapter.

(a) A developer, upon receipt of a notice of proceedings issued under §§1710.14, 1710.15 and 1710.16 of this chapter, may obtain a hearing by filing a written request contained in the notice of proceedings. The request must be filed within 15 days of receipt of the notice of proceedings and must be accompanied by an answer conforming to the requirements of §1720.245. Filing of a motion for a more definite statement under §1720.315 shall alter the period of time to request a hearing in accordance with §1720.240.

(b) When a hearing is requested pursuant to paragraph (a) of this section, such hearing shall be held within 45 days of receipt of this request. The time and place for the hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties of their representatives.

(c) Failure to answer within the time allowed by §1720.240, or failure to appear at a duly scheduled hearing shall result in an appropriate order under §1710.14 §1710,15 or §1710.16 of this chapter terminating the developer's exemption. The order shall be effective as of the date of service or receipt.

[45 FR 40500, June 13, 1980, as amended at 54 FR 40868, Oct. 4, 1989]

§1720.240 Time for filing answer.

(a) Within 15 days after service of the notice or order, the respondent shall mail or submit to the Docket Clerk for Administrative Proceedings, Room 10278, Department of Housing and Urban Development, Washington, DC 20410, an answer and three copies thereof signed by the respondent or attorney. Unless a different time is fixed by the Secretary, the filing of a motion for a more definite statement of the allegations shall alter the period of time in which to file an answer as follows:

(1) If the motion is denied, the answer shall be filed within 15 days after service of the denial.

(2) If the motion is granted in whole or in part, the more definite statement of allegations shall be filed after service of the order granting the motion and the answer shall be filed within 15 days after service of the more definite statement of allegations.

(b) If a notice or order is amended pursuant to §1720.255(a), the respondent shall have 15 days after service of the amended notice or order within which to file an answer.

§1720.245 Content of answer.

(a) An answer to a notice or order shall contain:

(1) Specific admission, denial or explanation of each fact alleged in the notice or, if the respondent is without knowledge thereof, a statement to that effect; and

(2) A brief statement of the facts constituting each defense.

(b) Allegations not answered in this manner shall be deemed admitted.

§1720.250 Presumption of hearing request.

When an answer to a suspension notice, a notice of proceedings, or a suspension order is timely filed but a respondent has failed specifically to request a hearing, the answer shall be deemed to constitute such a request.

§1720.255 Amendments and supplemental pleadings.

(a) *Amendments.* Prior to the receipt by the Docket Clerk for Administrative Proceedings of an answer to a notice or order, that notice or order may be amended as a matter of course. After the receipt of an answer, the administrative law judge may allow appropriate amendments to pleadings by motion whenever determination of a controversy on the merits will be facilitated thereby.

(b) *Variances of proof.* When issues not raised by the pleadings but reasonably

within the scope of the suspension notice or notice of proceedings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings; and such amendments of the pleadings as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time.

(c) *Supplemental pleadings.* The administrative law judge may, upon reasonable notice and such terms as are just, permit service of a supplemental pleading setting forth transactions or events which have occurred since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 1720.260 Prehearing conferences.

(a) Where it will expedite the proceeding, the administrative law judge may direct or allow the parties or their representatives to appear for a conference to consider:

(1) Simplification and clarification of the issues;

(2) Necessity or desirability of amendments to the pleadings;

(3) Stipulations and admissions of fact and the contents and authenticity of documents;

(4) Expedition in the discovery and presentation of evidence;

(5) Matters of which official or judicial notice will be taken; and

(6) Such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and of documents or other exhibits which will be introduced in evidence in the course of the proceeding.

Prior to the conference, the administrative law judge may direct or allow the parties or their representatives to file memoranda specifying the issues of law and fact to be considered.

(b) If the circumstances are such that a conference is impracticable, the administrative law judge may require the parties to correspond for the purpose of accomplishing any of the objectives set forth in this section.

§ 1720.265 Reporting—prehearing conferences.

Prehearing conferences shall be stenographically or mechanically reported; and the administrative law judge shall prepare and file for the record a written summary of the action taken at the conference, which shall incorporate any written agreements or stipulations made by the parties at the conference or as a result of the conference.

MOTIONS

§ 1720.305 Motions—filing requirements.

During the time a proceeding is before an administrative law judge, all motions therein shall be in writing; and, except as otherwise provided in this part, a copy of each motion shall be served on the other party or parties. Such motions shall be signed, addressed to, filed with and ruled upon by the administrative law judge. The provisions of this section need not apply to motions made during the course of a hearing.

§ 1720.310 Answers to motions.

Within 7 days after service of any written motion, an opposing party shall answer or shall be deemed to consent to the granting of the relief asked for in the motion. The moving party shall have no right to reply except as permitted by the administrative law judge or the appeals officer.

§ 1720.315 Motion for more definite statement.

When a respondent is unable to respond to the allegations in a suspension notice, a notice of proceedings, or a suspension order, because such allegations are vague, unclear or otherwise indefinite, motion may be made requesting a more definite statement of the allegations before filing an answer. Such motion shall indicate specifically in what manner the notice or order is indefinite or defective and shall be mailed or submitted to the Docket Clerk for Administrative Proceedings, Room 10278, Department of Housing and Urban Development, Washington, DC 20410, within five days after service of the notice or order.

§1720.320 Motions for extension of time.

As a matter of discretion, the administrative law judge or the appeals officer may waive the requirements of §1720.310 as to motions for extension of time, and may rule upon such motions ex parte. Extensions of time or continuances in any proceeding may be ordered on a motion by the administrative law judge or on the motion of either party for sufficient cause after the policy of the Secretary under §1720.125 has been considered.

§1720.325 Motions for dismissal.

(a) A motion to dismiss may be made at any time until and including the fifth day after the close of the case for the reception of evidence.

(b) When a motion to dismiss, based upon alleged failure to establish a prima facie case, is made at the close of the evidence offered in support of the notice or order, the administrative law judge may defer ruling thereon until the close of the case for the reception of evidence.

(c) When a motion to dismiss is granted so as to terminate entirely the proceeding before the administrative law judge, the administrative law judge shall file a decision in accordance with the provisions of §1720.525. If such a motion is granted only as to some allegations or as to some respondents, the administrative law judge shall enter this partial determination on the record and take it into account in the decision.

§1720.330 Motions to limit or quash.

Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpoena, apply to the administrative law judge to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. The administrative law judge shall have the discretion of granting, denying or modifying said motion.

§1720.335 Consolidation.

When more than one proceeding involves a common question of law or fact, the administrative law judge may order a joint hearing of any or all of the matters in issue in the proceedings and may make such other orders concerning the proceedings as to avoid unnecessary costs or delay.

Discovery and Evidence

§1720.405 Depositions and discovery.

(a) At any time during the course of a proceeding, the administrative law judge may discretionally order the taking of a deposition and the production of documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for the purpose of discovery or to preserve relevant evidence. Insofar as consistent with considerations of fairness and the requirements of due process and the rules of this subpart, a deposition shall not be ordered when it appears that it will result in undue burden to any other party or in undue delay of the proceeding. Depositions may be taken orally or upon written interrogatories and cross-interrogatories.

(b) Any party desiring to take a deposition shall make application in writing to the administrative law judge setting forth the justification therefor and the time and place proposed for the taking of the deposition. The application shall include also the name and address of each proposed deponent and the subject matter concerning which each is expected to depose and shall be accompanied by an application for any subpoenas desired.

(c) An order that the administrative law judge may issue for taking a deposition shall state the circumstances warranting its being taken, and shall designate the time and place and shall show the name and address of each person who is expected to appear and the subject matter with regard to which each is expected to depose. The time designated shall allow not less than 5 days from date of service of the order when the deposition is to be taken within the United States, and not less than 15 days when the deposition is to be taken elsewhere.

(d) After an order is served for taking a deposition upon motion timely made by any party or by the person to be deposed and for good cause shown, the administrative law judge may determine

the propriety of and issue any of the following orders:

(1) That the deposition shall not be taken.

(2) That it may be taken only at some designated place other than that stated in the order.

(3) That it may be taken only on written interrogatories.

(4) That certain matters shall not be inquired into.

(5) That the examination shall be held with no one present except the parties to the action, their counsel and a person qualified in the designated place to administer oaths and affirmations.

(e) The administrative law judge may make any other order which justice requires to protect the party or deponent from annoyance, embarrassment or oppression, or to prevent the unnecessary disclosure or publication of information contrary to the public interest and beyond the requirements of justice in the particular proceeding.

(f) Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. The questions and the anwers, together with all objections made, but excluding argument or debate, shall be reduced to writing and certified by the person before whom the deposition was taken. Thereafter such person shall forward the deposition and one copy thereof to the party at whose instance the deposition was taken, and shall forward one copy thereof to the representative of each party who was present or represented at the taking of the deposition.

(g) A deposition taken to preserve relevant evidence which any party intends to offer in evidence may be corrected in the manner provided by §1720.515. Any such deposition shall, in addition to the other required procedures, be read to or by the deponent and be subscribed by the deponent if the party intending to offer it in evidence so notifies the person before whom the deposition was taken. Subject to appropriate rulings on such objections to the questions and answers as were noted at the time the deposition was taken or as may be valid when it is offered, a deposition taken to preserve relevant evidence, or any part thereof, may be used or offered in evidence as against any party who was present or represented at the taking of the deposition or who had due notice thereof if the administrative law judge finds any of the following:

(1) That the deponent is dead.

(2) That the deponent is out of the United States or is located at such a distance that attendance would be impractical, unless it appears that the absence of the deponent was procured by the party offering the deposition.

(3) That the deponent is unable to attend or testify because of age, sickness, infirmity or imprisonment.

(4) That the party offering the deposition has been unable to procure the attendance of the deponent by subpoena.

(5) That such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

§1720.410 Subpoenas ad testificandum.

Application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at an adjudicative hearing shall be made to the administrative law judge who may issue such subpoena.

§1720.415 Subpoenas duces tecum.

(a) Application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specific documents, papers, books, or other physical exhibits at the taking of a deposition, or at a prehearing conference, or at an adjudicative hearing shall be made in writing to the administrative law judge who may issue such subpoena and shall specify as exactly as possible the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) Subpoenas duces tecum may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits

for use in evidence, or for both purposes. When used for discovery purposes a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody or control of such person.

§1720.420 Rulings on applications for compulsory process; appeals.

(a) Applications for orders requiring the production of witnesses' statements pursuant to the provisions of §1720.430, applications for orders requiring the taking of depositions pursuant to §1720.405 and applications for the issuance of subpoenas pursuant to §§1720.410 and 1720.415 may be made ex parte, and, if so made, such applications and the rulings thereon shall remain ex parte unless otherwise ordered by the administrative law judge. Such applications shall be ruled upon by the administrative law judge assigned to hear the case or, in the event that judge is not available, by another administrative law judge designated by the Secretary.

(b) Appeals to an appeals officer from rulings denying applications within the scope of paragraph (a) of this section, or from rulings on motions to limit or quash process issued pursuant to such applications will be entertained by the appeals officer only upon a showing that the ruling complained of involves substantial rights and will materially affect the final decision, and that a determiniation of its correctness before conclusion of the hearing is essential to serve the interests of justice. Such appeals shall be made on the record, shall briefly state the grounds relied on and shall be filed within 5 days after notice of the ruling complained of. Appeals from denials of ex parte applications shall have annexed thereto copies of the applications and rulings involved. Any answer to such appeal shall not operate to suspend the hearing unless otherwise ordered by the administrative law judge or the appeals officer.

§1720.425 Presentation and admission of evidence.

(a) All witnesses at a hearing for the purpose of taking evidence shall testify under oath or affirmation which shall be administered by the administrative law judge. Every party shall have the right to present such oral or documentary evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts. The administrative law judge shall receive relevant and material evidence, rule upon offers of proof and exclude all irrelevant, immaterial or unduly repetitious evidence.

(b) Evidence shall not be excluded merely by application of technical rules governing its admissibility, competency, weight or foundation in the record; but evidence lacking any significant probative value, or substantially tending merely to confuse or extend the record, shall be excluded. The administrative law judge may allow arguments on the admissibility of evidence by analogy to the Federal Rules of Evidence currently applicable in the United States District Courts of the United States.

(c) When offered evidence is excluded, the party offering the same shall be permitted to state on the record an offer of proof with respect thereto and rejected exhibits, adequately marked, shall on request of the party offering the same be retained in the record for purposes of review. Evidence may be received subject to deferred ruling on objections to its admissibility.

(d) Objections to evidence shall be timely made and shall specify the particular ground of objection without argument except as argument may be expressly required by the administrative law judge. Formal exception to an adverse ruling is unnecessary.

§1720.430 Production of witnesses' statements.

After a witness called by the attorney for the Office of Interstate Land Sales Registration has given direct testimony in a hearing, any other party may request and obtain the production of any statement, or part thereof, of such witness pertaining to the witness' direct testimony in the possession of the Office of Interstate Land Sales

Registration, subject, however, to the limitations applicable to the production of witnesses' statements under the Jencks Act, 18 U.S.C. 3500.

§ 1720.435 Official notice.

Official notice may be taken of any material fact which might be judicially noticed by a District Court of the United States, any matter in the public official records of the Office of Interstate Land Sales Registration or any matter which is peculiarly within the knowledge of the administrative law judge. When any decision of an administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely request therefor.

HEARINGS

§ 1720.505 Interlocutory review of administrative law judge's decision.

(a) The appeals officer will not review a ruling of an administrative law judge prior to the appeals officer's consideration of the entire proceeding in the absence of extraordinary circumstances. Except as provided in § 1720.140 an administrative law judge shall not certify a ruling for interlocutory review to an appeals officer unless a party so requests and the administrative law judge is of the opinion and finds either on the record or in writing that:

(1) A subsequent reversal of the ruling would cause unusual delay or expense, taking into consideration the probability of such reversal, or

(2) Substantial rights are at stake and the final decision might be materially affected.

(b) The certification by the administrative law judge shall be in writing and shall specify the material relevant to the ruling involved. The appeals officer may decline to consider the ruling certified if the officer determines that interlocutory review is not warranted or appropriate under the circumstances. If the administrative law judge does not certify a matter, a party who had requested certification may apply to the appeals officer for review. An application for review shall be in writing and shall briefly state the grounds relied on and shall be filed within 2 days after notice of the ruling complained of. Review will not be granted unless the appeals officer concludes that the administrative law judge erred in failing to certify the matter. Unless otherwise ordered by the administrative law judge, the hearing shall continue whether or not such certification or application is made. Failure to request certification or to make such application will not waive the right to seek review of the ruling of the administrative law judge after the close of the hearing.

[43 FR 29496, July 7, 1978, as amended at 50 FR 10942, Mar. 19, 1985]

§ 1720.510 Reporting and transcription.

Hearings shall be stenographically or mechanically reported and transcribed under the supervision of the administrative law judge. The original transcript shall be a part of the record and the sole official transcript. Copies of transcripts shall be available from the reporter at rates not to exceed the maximum rates fixed by contract between the Secretary and the reporter.

§ 1720.515 Corrections.

Corrections of the official transcript ordered by the administrative law judge shall be included in the record. Corrections shall not be ordered by the administrative law judge except upon notice and opportunity for the hearing of objections. Such corrections shall be made by the reporter by furnishing substitute pages, under the usual certificate of the reporter, for insertion in the official record.

§ 1720.520 Proposed findings, conclusions, and order.

The administrative law judge may fix a reasonable time, not to exceed 30 days after the close of the evidence, during which any party may file with the administrative law judge proposed findings of fact, conclusions of law and rules or orders together with briefs in support thereof. Such proposals shall be in writing, shall be served upon all

parties and shall contain adequate references to the record and to authorities relied on. The record shall show the administrative law judge's ruling on each proposed finding and conclusion, except when the rule or order disposing of the proceeding otherwise informs the parties of the action taken thereon.

§1720.525 Decision of administrative law judge.

(a) The administrative law judge shall make and file a decision within 30 days after the close of the taking of evidence in cases in which a hearing is held.

(b) The decision shall be effective 10 days after service upon the parties unless a petition for appeal is filed pursuant to §1720.605 which shall serve to stay the effectiveness of the decision while the appeal procedure is ongoing.

§1720.530 Decision of administrative law judge—content.

The administrative law judge's decision shall include a statement of:

(a) Findings, with specific references to principal supporting items of evidence in the record and conclusions, as well as the reasons or bases therefor, upon all of the material issues of fact, law or discretion presented on the record, and

(b) An appropriate order.

The administrative law judge's decision shall be based upon a consideration of the whole record and supported by reliable, probative and substantial evidence.

§1720.535 Reopening of proceeding; termination of jurisdiction.

(a) At any time prior to the filing of the decision, the administrative law judge may reopen the proceeding for the reception of further evidence.

(b) The jurisdiction of the administrative law judge is terminated when the decision becomes effective unless and until the proceeding is remanded to the judge by the appeals officer or a court of appropriate jurisdiction. The administrative law judge may *sua sponte* or on motion of a party file corrections of clerical errors.

APPEALS

§1720.605 Appeal from decision of administrative law judge.

(a) *Petition for appeal.* The administrative law judge's decision may be appealed by filing a written petition for appeal with the Docket Clerk for Administrative Proceedings within 10 days after service of the decision appealed from. Copies of the petition for appeal shall be served on all interested parties. The petition shall be limited to specifying the findings and conclusions to which exceptions are taken, together with a summary of the reasons in support of such exceptions.

(b) *Denial of petition.* A petition for appeal of the decision of the administrative law judge may be denied by the appeals officer. The petition shall be ruled on by the appeals officer within 10 days after filing. A denial of the petition shall be final agency action and shall render the administrative law judge's decision immediately effective.

(c) *Appeal brief.* If the appeals officer grants the petition, the appeal shall be perfected by filing within 30 days after service of the decision granting the petition a brief conforming to §1720.620. In addition, the appellant shall submit a proposed order for the consideration of the appeals officer.

§1720.610 Answering brief.

Within 20 days after service of an appeal brief upon a party, such party may file an answering brief conforming to the requirements of §1720.620.

§1720.615 Reply brief.

A brief in reply to an answering brief, limited to rebuttal of matters in the answering brief, may be filed and served by a party within 7 days after receipt of the answering brief or the day preceding oral argument whichever is earlier. No answer to a reply brief will be permitted.

§1720.620 Length and form of briefs.

No brief shall exceed 60 pages in length except with the permission of the administrative law judge or the appeals officer on the Interstate Land Sales Board and shall contain, in the order indicated, the following:

(a) The title of the proceeding, file number, the name of the party on whose behalf it is submitted and the name and address of the attorney in the matter on the front cover or title page.

(b) Subject index with page references.

(c) Table of cases alphabetically arranged, statutes, texts, and other authorities and materials cited, with page references.

(d) A concise statement of the facts of the case, without argument.

(e) A concise statement of the questions sought to be raised.

(f) The argument, presenting clearly the points of fact and law relied upon in support of the position taken on each question with specific page references to the record so far as available, and to legal authority or other material relied upon in support of statements contained in the argument.

§ 1720.625 Oral argument.

Oral arguments will not be heard in cases on appeal to the appeals officer unless the officer otherwise orders, and stenographic or mechanical record of such oral argument may be made, in the officer's discretion. The purpose of oral argument is to emphasize and clarify the written argument appearing in the briefs and to answer questions.

§ 1720.630 Decision on appeal or review.

(a) Upon appeal from or review of an administrative law judge's decision, the appeals officer will consider such parts of the record as are cited or as may be necessary to resolve the issues and, in addition, to the extent necessary or desirable, will exercise all the powers which could have been exercised had the appeals officer made the initial decision. Unless exceptional circumstances are present, however, all appeals and reviews will be determined upon the record made before the administrative law judge.

(b) The appeals officer may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the administrative law judge's decision. The appellate order shall set forth the reasons upon which the decision is based.

(c) In those cases where the appeals officer believes that further information or additional arguments of the parties are needed as to the form and content of the rule or order to be issued, the appeals officer may withhold final decision pending the receipt of such additional information or argument under procedures specified.

(d) The decision of the appeals officer shall be final 10 days after service upon the parties.

(e) The appeals officer shall render a decision within 30 days after the date of receipt of the reply brief or the taking of additional information and evidence, whichever is later.

§ 1720.635 Appeals officer.

The Secretary shall hear, consider and determine fully and finally all appeals from decisions made pursuant to the rules in this part by the administrative law judge; provided, however, that the Secretary may, upon lawful delegation, designate a staff member or other person to serve as the appeals officer.